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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JEREMIAH JOHNSON,

No. C 07-6510 MHP (pr)

Petitioner,

**ORDER DENYING "MOTION TO
EXPEDITE" AND FOR
CERTIFICATE OF APPEALABILITY**

v.

JAMES TILTON,

Respondent.

Petitioner by a "Motion to Expedite" seeks a certificate of appealability from a dismissal and judgment entered in this matter on December 18, 2008. He claims the delay in making this request is not a delay at all because he made such a request, apparently "through is [sic] notice of appeal and forma pauperis filed since August 26, 2008", and which he states was not entered on the docket because the papers were lost "after they were filed".

It is true that there is no entry on the docket showing any such papers being filed. On the other hand it is unlikely that such papers were submitted four months before the dismissal. At that time there was no order from which to appeal. If petitioner made a typographical error and intended to say August 26, 2009, then his purported submission was far too late.

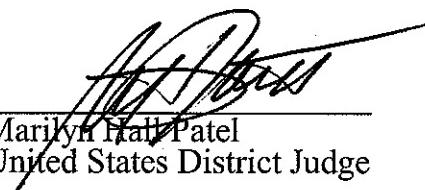
In any event, this court would not have issued a certificate of appealability even if it was timely given the grounds for dismissal. As the December 18 order states, petitioner withdrew his claim and thereafter the respondent moved to dismiss on the ground that

1 petitioner had withdrawn the only claim the court found cognizable. In addition, petitioner
2 did not oppose that motion.

3 Therefore, petitioner's "motion to expedite" is DENIED and, treating this as an
4 application for a certificate of appealability, the application is DENIED.

5
6 IT IS SO ORDERED.
7

8 DATED: September 30, 2008
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Marilyn Patel
United States District Judge